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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,421	10/30/2003	Douglas M. Baney	10030567-1	7220
7590 12/23/2005			EXAMINER	
AGILENT TECHNOLOGIES, INC. Legal Department, DL429 Intellectual Property Administration P.O. Box 7599 Loveland, CO 80537-0599			TURNER, SAMUEL A	
			ART UNIT	PAPER NUMBER
			2877	
DATE MAILED: 12/23/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/697,421	Applicant(s) BANEY ET AL.	
	Examiner Samuel A. Turner	Art Unit 2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 3, 4 and 9 is/are allowed.
- 6) ☒ Claim(s) 2, 5-8 and 10-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/30/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: paragraph [0036] refers to a figure 2A which is not found in either the drawings or the "Brief Description".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 5-8, and 10-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to claims 2, 11, and 14; the phrase "and combinations of said parameters" fails to define the metes and bounds of the claimed invention. The "combinations are not clearly defined and thus are not positively claimed. Alternative expressions are permitted if they present no uncertainty or ambiguity with respect to the question of scope or clarity of the claims. In the instance where the list of potential alternatives can vary and ambiguity arises, then it is proper to make a rejection under 35 U.S.C. 112, second paragraph, and explain why there is confusion.

With regard to claims 5-7, the phrase “said phase patterns” does not refer to the language of claim 4 in the alternative, referring only to one specific pattern. Thus how do claims 5-7 further limit the other alternatives ?

With regard to claim 8, the differences between the “optical navigation system” of claim 1 and the “optical navigation device” are undefined.

With regard to claim 10, the relationship between the “optical navigation device” and the “optical navigation system” are not defined. Claim 17 provides some differences but a positive relationship is not defined.

With regard to claim 13, there is no antecedent basis for “a plurality of said first sources and said second sources”. Claim 10 only provides antecedent basis for “a first source and a second source”.

Allowable Subject Matter

Claims 1, 3, 4, and 9 are allowed in view of the prior art of record.

Claims 2, 5-8, and 10-20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

The prior art of record fails to teach in an optical navigation system illuminating navigation terrain a “means to select” as found in claims 1 and 10 in combination with the other limitations of said claims.

Relevant Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Theytaz et al(2005/0231482) is not available under 35 U.S.C. 102 as prior art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel A. Turner whose phone number is 571-272-2432.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr., can be reached on 571-272-2800 ext. 77.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Samuel A. Turner', with a stylized flourish at the end.

Samuel A. Turner
Primary Examiner
Art Unit 2877